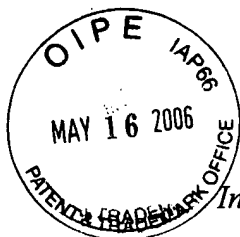


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May 16, 2006

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Date: May 16, 2006

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By:

Carolyn H. Bates
Carolyn H. Bates

Re: Our Docket No. 03178-PA (0875.0001)

Dear Sir:

Enclosed please find the following:

1. Brief For Appellant duly executed.
2. Our check No. 0972 in the amount of \$250.00 to cover the filing fee for the Brief.
3. Our post card. (Please date stamp and return.)

ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP

Commissioner for Patents

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May 16, 2006

Please address all correspondence to:

ARMSTRONG, KRATZ, QUINTOS,
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Intellectual Property Law Offices
502 Washington Avenue, Suite 220
Towson, Maryland 21204.

If there are any additional fees required, please charge our Deposit Account No. 02-2839.

Thank you for your cooperation and assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert M. Gamson', with a stylized flourish at the end.

Robert M. Gamson

RMG/chb

Enclosures

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Fallin

*

Serial No. 10/631,202

*

Art Unit: 1761

Filed: July 31, 2003

*

Examiner: Ms. Sarah Kuhns

For: COATED ANIMAL
FEED SUPPLEMENT

*

*

BRIEF FOR APPELLANT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the final rejection of claims 1 and 4-6 by the Examiner dated November 2, 2005. These are all the claims pending in this application. The Brief is accompanied by the requisite fee set forth in §1.17(c).

1. The real party in interest is the one listed in the caption of the brief.
2. There are no other appeals or interferences related to this application.
3. The only claims on appeal and in this application are claims 1 and 4-6. A copy of the claims on appeal are provided in the appendix.
4. There is one unentered Amendment in this application which was filed on January 26, 2006.

5. Summary of the Invention

The invention may be summarized by the following:

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Granules of anhydrous potassium carbonate 12 are coated with only hydrogenated fat 10, wherein the coating is 1.5% by weight of the anhydrous potassium carbonate. The coating shields the potassium carbonate from moisture, acids and bases.

The specification on pages 3-4 disclose the granules of anhydrous potassium carbonate 12 which are coated with hydrogenated animal fat 10. The coating is approximately 1.5% by weight. FIGS. 1 and 2 show the granules and the coated granules. The method for coating the granules is disclosed. Beneficial properties of the coated granules are disclosed.

6. Issues

Whether claims 1 and 4-6 are unpatentable under 35 U.S.C. §103(a) over Galler (US 3,196,018) in view of Armand Products Company brochure.

7. Grouping of Claims

The claims stand or fall together.

8. Argument

The applicant discloses only anhydrous potassium carbonate as the animal feed supplement which is coated to protect the hygroscopic material from collecting moisture and thereby maintaining the product in a free flowing condition. Anhydrous potassium carbonate is recited in dependent claim 6. Galler provides a coating only for the bisulfite adduct of menadione (MBA) (column 1, lines 36-40). Chemically and physically, MBA is different from anhydrous potassium carbonate.

Assumptions cannot be made that a coating for one of these materials is satisfactory for the other.

Galler discloses several film materials including cellulose, waxes, fatty acid esters and hydrogenated tallow (column 3, lines 28-35). The Examiner interprets this to mean that the

reference discloses a coating of only tallow. The Examiner further infers that only tallow is disclosed by the reference which states that the "product may be prepared by dispersing MBA in a molten or viscous mass of the coating material, subsequently coating an otherwise solidifying and then grinding the resulting slab" (column 3, lines 68-71). It is submitted that this method is useful for tallow mixed with other substances and does not support the Examiner's position. Since the Examiner has introduced the method of preparation, a response must be made that the applicant coats the granules by applying liquified fat to falling granules of anhydrous potassium carbonate (page 3, line 17 to page 4, line 3). The reference does not disclose nor suggest coating the MBA in any related manner.

The applicant disagrees with the Examiner's understanding of Galler. The applicant interprets Galler to disclose a film material which is composed of a mixture of materials such as described in the examples listed in columns 5 and 6. Example IX is the only example which lists tallow and it is mixed with methyl cellulose. Nowhere does Galler state that the film material is not a mixture of materials.

Applicant wishes to point out that as required by MPEP 2143.01, there must be some suggestion or motivation to combine the references. The level of skill in the art cannot be relied upon to provide the suggestion to combine the references. In re Rouffet 47 USPQ2d 1453 (1457-58). The mere fact that the references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills 16 USPQ2D 1430. Note particularly that the conclusion that the modification would be well within the

ordinary skill of the art is not sufficient. There must be some objective reason to combine the teachings of the references.

Applicant also notes that Galler issued in 1965 and Armand states that the producers of potassium carbonate combined in 1986. This chemical was in production many years before the merger date. Thus, at a minimum, the disclosure of Galler has coexisted with the commercial availability of anhydrous potassium carbonate for at least 30 years. Armand recognizes the hygroscopic properties of potassium carbonate but does not suggest or disclose a coating for the material (page 15). No one in this expanse of time has been motivated to combine the references as suggested by the Examiner. The Examiner, in the Office Action of May 5, 2005, admits that "Galler does not disclose that the coating is used on an inorganic feed supplement or that the supplement is anhydrous potassium carbonate". It is submitted that there is no motivation in the references that they be combined in any manner. The combination, as suggested by the Examiner, is impermissible hindsight.

In view of the above remarks, the applicant believes that he has rebutted the Examiner's rejection under 35 USC §103.

In Summary

Galler is not a valid reference to reject the claim because it does not teach only hydrogenated fat as a coating for the feed supplement. Galler has never suggested or disclosed coating anhydrous potassium carbonate. The material coated by Galler is different from the material coated by the applicant.

Armand does not suggest a coating on anhydrous potassium carbonate.

The references have coexisted for over 30 years and no one skilled in the art has ever combined the references as suggested by the Examiner.

The Examiner has not provided any motivation for coating the anhydrous potassium carbonate feed supplement with only hydrogenated fat. The Examiner is relying on impermissible hindsight construction, and relying on applicant's own disclosure to make her rejection. This is improper.

Appellant requests that the Examiner's rejection of claims 1 and 4-6 be reversed.

Respectfully submitted,

May 16, 2006
Date

Robert M. Gamson
Robert M. Gamson
Reg. No. 32,986
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By: Carolyn H. Bates
Carolyn H. Bates



Serial No. 10/631,202
Docket No. 03178-PA (0875.0001)

APPENDIX

Claim 1 (previously amended) A coated granular animal feed supplement comprising a coating, wherein the coating is only hydrogenated fat formed on an inorganic feed supplement wherein the inorganic feed supplement is shielded to reduce reaction with moisture and acids and bases.

Claim 2 (canceled).

Claim 3 (canceled).

Claim 4 (original) The feed supplement of claim 1, wherein the coating is 1-5% by weight of the feed supplement.

Claim 5 (previously presented) The feed supplement of claim 1, wherein the inorganic feed supplement is substantially potassium carbonate.

Claim 6 (original) The feed supplement of claim 5, wherein the potassium carbonate is anhydrous.

Claims 7-14 (canceled).

RMG/chb

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